REMARKS

By this amendment, claims 1-14, 16-38, and 40-50 are pending, in which claim 26 is currently amended. No new matter is introduced. Claims 15 and 39 were previously canceled. Claim 26 merely incorporates features analogous to features found in independent claim 1 in order to reduce issues for Appeal. Thus, the changes are not believed to raise new issues requiring further consideration and/or search, and it is therefore respectfully requested that the present amendment be entered under 37 C.F.R. §1.116.

The final Office Action mailed February 9, 2006 rejected claims 1, 2, 4, 5-10, 16, 17, 22-27, 29-35, 40, 41, and 46-49 under 35 U.S.C. § 102 as anticipated by *Alles et al.* (US 6,466,976), claims 19-21, and 43-45 as obvious under 35 U.S.C. § 103 based on *Alles et al.*, claims 12-14, 18, 37, 38 and 42 as obvious based on *Alles et al.* in view of *Gai et al.* (US 6,167,445), claims 11 and 36 as obvious based on *Alles et al.* in view of *Natarajan et al.* (US 6,505,244), and claims 3, 28 and 50 as obvious based on *Alles et al.* in view of *Amara et al.* (US 6,674,743).

Applicants respectfully traverse the rejections under 35 U.S.C §§ 102 and 103 as the applied art fails to anticipate or make obvious the many features of the pending claims. In particular, Applicants respectfully submit that the interpretation of the channel identifier within the switch fabric 340 of *Alles et al.* as the claimed "packet header filter" is improper. Applicants have attempted to provide further distinction by introducing, in Applicants' prior Response, the feature of "**a control interface through which said packet header filter** and said forwarding table are **programmed**." Additionally, the Examiner appears to have ignored the claimed "forwarding table." Furthermore, the claims recite use of an "**external** processor," which cannot be satisfied by the packet service card 350 which is within (or internal) to the Internet Service Node 150 in the *Alles et al.* system. These several patentable distinctions are further explained below.

Independent claim 1 recites "wherein said **packet header filter identifies messages** received at one of the first and second network interfaces **on which policy-based services are to be implemented** and passes identified messages via a message interface to an **external processor**" and "**a control interface through which said packet header filter and said forwarding table are programmed.**" Independent claim 26 recites "**filtering the series of packets by a packet header filter** at the programmable access device **to identify messages upon which policy-based services are to be implemented**; passing identified messages to an **external processor** included in the network access system for implementation of the policy-based services by the external processor" and "**programming the packet header filter and the forwarding table** through a control interface of said programmable access device." Claim 50 recites "wherein the **first packet header filter identifies messages**, received from the first network interface, on which policy-based services are to be implemented, wherein the first packet header filter passes the identified messages to the **external processor**" and "**a control interface through which said first packet header filter is programmed.**"

The Office Action, on page 3, cites col. 10: 36-47 for the claimed packet header filter, in which the channel identifier used by the switch fabric 340 is presumably the claimed packet header filter. First, Applicants note that one of ordinary skill would understand that a switch fabric, as that of the *Alles et al.* switch fabric 340, does not have a capability to filter, but to perform switching of channels by mapping traffic from one port to another port. The channel identifier to which the Examiner refers simply supports this forwarding mechanism, and does not provide any filtering capability. The cited passage of col. 10: 36-47 states the following (Emphasis Added):

> To determine the appropriate packet service card, **switch fabric 340 may maintain a channel identifier associated with each channel** on which the bit

groups are received. **In case of ATM cells, the VCI/VPI information in the bit groups uniquely defines such a channel.** The physical port number (on which the data is received) and channel identifier may uniquely identify each subscriber (or a group of subscribers with non-overlapping IP addresses) when data is directly received from a subscriber and destined for the Internet. On the other hand, when data is received from the Internet, the determination of the associated subscriber may require examination of the IP header.

Given the above passage, as best as can be understood, the Examiner broadly interprets the capability to segregate channels as a "filter." Although the Examiner is entitled to the broadest reasonable interpretation of the claims, this doctrine does not extend to interpretation of references. The switch fabric 340 having a channel identifier capability is not a filtering capability, much less the claimed packet header filter; for instance, claim 26 recites "**filtering the series of packets by a packet header filter** at the programmable access device **to identify messages upon which policy-based services are to be implemented.**" The claimed filtering process identifies messages "**upon which policy-based services are to be implemented,**" which requires more logic than forwarding traffic based on channel identifiers.

The *Alles et al.* system operates differently from the claimed invention to effect policy. The *Alles et al.* system predetermines which ATM cells are to be applied certain policies based on the subscriber identifier (col. 10: 33-35). Instead of filtering, the switch fabric 340 simply routes traffic based on a channel identifier to a corresponding specific packet service card 350, which applies the policy corresponding to the subscriber. Different channel identifiers are predesignated to the corresponding packet service cards 350, without any need to filter, but routing to the packet service card 350. In a sense, the determination of whether to apply any policy in the *Alles et al.* system is performed in advance of the cell arriving at the switch fabric 340, and therefore is not performed at the switch fabric 340.

Secondly, under the Examiner's interpretation that somehow the switch fabric 340 utilizing channel identifiers is the claimed packet header filter, it is not understood how the claimed forwarding table is satisfied. For example, claim 1 recites "wherein the forwarding table is utilized to forward packets between the first and second network interfaces." Therefore, using the Examiner's rationale, the claimed forwarding table is absent from *Alles et al.*

Additionally, the claim features include "a control interface through which said **packet header filter and said forwarding table are programmed**." To satisfy this feature, the Office Action explains (page 12) that "the packet header filter is programmed with channel identifiers that describe which service card ... this is a programmed feature within the program header and also much [sic] be inherently programmed when the service cards are programmed...." Based on this statement, the Office Action is suggesting that the switch fabric 340 is programmed with channel identifiers. However, given the operation of the *Alles et al.* system, such programming of channel identifiers would be akin to updating a forwarding table. In attempting to satisfy the recited feature of the packet header filter, the Examiner simply dismisses the fact that the claims also recite utilizing and programming a forwarding table. Applicants respectfully submit that the Examiner is forced to do so when attempting to apply *Alles et al* because it is self evident that *Alles et al* cannot simultaneously meet both the recited features of a packet header filter and a forwarding table.

Moreover, the claims recite an "**external** processor." It is improper to ignore qualifiers in the claim terms such as "external." See *Apple Computer, Inc. v. Articulate Systems, Inc.*, 234 F.3d 14 (Fed. Cir. 2000) (holding that the district court "cannot read the qualifier 'help' out the definition of 'help access window'" of claim 2). As shown in FIG. 3, the packet service cards 350 reside

within the Internet Service Node 150, therefore, it is incorrect to interpret the packet service

cards 350 as the claimed external processor.

In the light of the above discussion, Applicants respectfully request that the rejection

under § 102 be withdrawn, as anticipation under 35 U.S.C. § 102 requires that each and every

element of the claim be disclosed in a prior art reference. Based on the foregoing, it is clear that

Alles et al. does not anticipate independent claims 1 and 26. Accordingly, dependent claims 2, 4-

10, 16-17, 22-25, 29-35, 40, 41 and 46-49 should be indicated as allowable based, at least, on

their dependencies from these independent claims.

With respect to the obviousness rejection of claims 19, 20, 21, 43, 44, and 45 over *Alles*

et al., the Office Action acknowledges that "Alles does not explicitly indicate that the identified

message is SIP, IGMP, or RSVP," and resorts to taking Official Notice. Applicants respectfully

contend that even if the taking of Official Notice were proper, the Examiner has ignored the fact

that such modification to the *Alles et al.* system to be able to identify messages that include SIP,

IGMP, or RSVP would change the principle of operation of *Alles et al.* If the proposed

modification or combination of the prior art would change the principle of operation of the prior

art invention being modified, then the teachings of the references are not sufficient to render the

claims *prima facie* obvious (see MPEP §2143.01). In the case at hand, there is no way to alter

the switch fabric 340, which relies on channel identifiers to forward the traffic, to be able to

detect such higher layer messages of SIP, IGMP, or RSVP. This would require the switch fabric

340 to parse the entire ATM cells to view the data payload. Such modification undoubtedly

requires a significant change in the principle of operation of the *Alles et al.* system.

Moreover, the Office Action's assertion that SIP, IGMP, and RSVP are "well known

communication protocols" is insufficient as a matter of law, because such conclusory statements,

premised on "common knowledge and common sense," fail to fulfill requirements of the

Administrative Procedure Act, *In Re Sang Su Lee*, No. 00-1158 (Fed. Cir. Jan. 18, 2002), and

that deficiencies of the cited references cannot be remedied by general conclusions about what is

"basic knowledge" or "common sense." *In Re Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697.

Accordingly, Applicants respectfully request withdrawal of the obviousness rejection of

claims 19, 20, 21, 43, 44, and 45.

As for the obviousness rejection of claims 12-14, 18, 37-38 and 42 based on the

combination of *Alles et al.* and *Gai et al.*, the *Gai et al.* reference (which is applied for a

supposed teaching of output buffers) does not fill in the gaps of *Alles et al.* Hence, the

obviousness rejection should be withdrawn.

With respect to the rejection of claims 11 and 36 as obvious based on *Alles et al.* in view

of *Natarajan et al.*, *Natarajan et al.* is applied for a supposed disclosure of a fault monitor and

does not cure the deficiencies of *Alles et al.* The cited passage (col. 26, lines 12-26) of

Natarajan et al. describes an event handler that is "responsible for reporting updated control

information stored within data store 252." The event handler simply has no fault monitoring

function. Accordingly, the rejection is unsustainable.

Regarding the obviousness rejection of claims 3, 28 and 50 based on *Alles et al.* in view

of *Amara et al.*, this rejection is improper as *Amara et al.* fails to fill in the gaps of *Alles et al.* In

addition, Applicants assert that the modification of *Alles et al.* based on the teachings of *Amara

et al.* would be improper. Claim 50 recites "a first packet header filter coupled to the first

network interface" and "a second packet header filter, different from the first packet header

filter, coupled to the second network interface." The packet classifiers 116-120 of *Amara et al.*

(col. 4: 55-65) operate to classify the packets received at interfaces 102-106 as either internally-

destined or external packets. Applicants do not understand how one of ordinary skill in the art

based on this teaching would attempt to modify the switch fabric 340 in the *Alles et al.* to employ

multiple "packet header filters." In fact, the proposed modification would result in having

multiple sets of "channel identifiers" used for the switch fabric 340; such construction is devoid

of any technical merit. In drawing this conclusion, the Office Action has ignored the basic tenets

of obviousness. In rejecting claim under 35 U.S.C. § 103, the Examiner must provide a <u>factual</u>

<u>basis</u> to support the obviousness conclusion. *In re Warner,* 379 F.2d 1011, 154 USPQ 173

(CCPA 1967); *In re Lunsford,* 357 F.2d 385, 148 USPQ 721 (CCPA 1966); *In re Freed,* 425 F.

2d 785, 165 USPQ 570 (CCPA 1970). Based upon the objective evidence of record, the

Examiner is required to make the factual inquiries mandated by *Graham v. John Deere Co.,* 86

S. Ct. 684, 383 U.S. 1, 148 USPQ 459 (1966). The Examiner is also required to explain <u>how and</u>

<u>why</u> one having ordinary skill in the art would have been led to modify an applied reference to

arrive at the claimed invention. *Uniroyal, Inc. v. Rudkin-Wiley Corp.,* 837 F.2d 1044, 5

USPQ2d 1434 (Fed. Cir. 1988). In establishing the requisite motivation, it has been consistently

held that both the suggestion and the reasonable expectation of success must stem from the prior

art itself, as a whole. *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); *In re Fine,*

837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Dow Chemical Co.,* 837 F.2d 469, 5
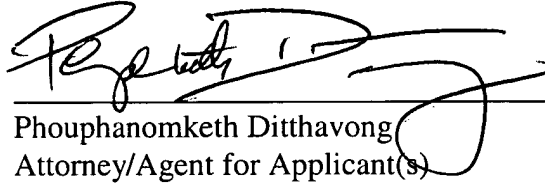
USPQ2d 1529 (Fed. Cir. 1988).

Accordingly, Applicants respectfully request the indication that independent claims 50

and dependent claims 3 and 28 are allowable.

Therefore, the present application overcomes the rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 425-8508 so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

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Date

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